

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conlin Strawberry Water Company, Inc., a California corporation (U-177-W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy the Conlin Strawberry Water Company Water System in Tuolumne County.

Application 05-12-001
(Filed December 2, 2005)

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed October 16, 2003)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Two cases filed with the Commission, while not consolidated, are coordinated in these proceedings. The first proceeding, Application (A.) 05-12-001, was commenced on December 2, 2005. The applicants, Conlin Strawberry Water Company, Inc. (Conlin), and Del Oro Water Company, Inc. (Del Oro), request the Commission's authorization for Conlin to transfer its water system to Del Oro pursuant to an Agreement to Purchase and Sell (July 20, 2005).

The second proceeding, Investigation (I.) 03-10-038, was originally filed with the Commission on October 16, 2003. After evidentiary hearings before the assigned Administrative Law Judge (ALJ), the Commission approved Decision (D.) 05-07-010 (July 21, 2005), authorizing the Commission's General Counsel to petition superior court for a receivership of the Conlin water system and imposing other sanctions. Conlin has applied for rehearing of D.05-07-010 (August 22, 2005), which application is still pending before the Commission. Conlin has also petitioned for modification of D.05-07-010, and that petition is pending before the assigned ALJ as a pleading in I.03-10-038.

A Prehearing Conference (PHC) was held on January 6, 2006, in A.05-12-001, in conjunction with a law and motion hearing in I.03-10-038. At that time, the assigned ALJ denied without prejudice a motion to consolidate both proceedings. The PHC was adjourned to allow preliminary pleading and mediation.

A second joint PHC and law and motion hearing was held on January 23, 2006. The PHC was adjourned to allow the board of directors of the Strawberry Property Owners' Association (SPOA) to determine whether they would support a proposed settlement.

A third joint PHC and law and motion hearing was held on January 30, 2006, by telephone conference call, where SPOA reported that the association would support the proposed settlement. The proposed settlement is anticipated to resolve all pending litigation and proceedings among all the signatories. The PHC was adjourned to allow the parties to execute and file (a) a stipulation indicating that the parties approved of Del Oro assuming interim management of the water system pending approval of the application, and (b) a

motion requesting that the Commission approved the proposed settlement negotiated by all the parties.

A fourth PHC and law and motion hearing was held on March 9, 2006, where the parties reported that the stipulation concerning interim management had been signed and filed, that Del Oro had assumed interim management of the water system, but that the parties still disagreed about certain issues — thus preventing the filing of a motion to approve a proposed settlement. The parties were directed to meet again with the mediator. To advance these proceedings, however, this Scoping Memo is now issued.

This ruling determines the scope, schedule, necessity of a hearing, and other matters concerning A.05-12-001 in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).¹ This ruling does not set forth a detailed scoping of I.03-10-038 since a Scoping Memo was previously issued in that proceeding; however, the schedule for certain events in I.03-10-038 is set forth in the table appearing in section 7.

1. Parties to Proceedings

In A.05-12-001, the applicants are Conlin and Del Oro. The Division of Ratepayer Advocates is the protestant. All these entities are parties in their respective cases and shall comply with the requirements of this ruling.

2. Assigned Commissioner; Principal Hearing Officer

Geoffrey F. Brown is the Assigned Commissioner. Pursuant to Pub. Util. Code § 1701.3, ALJ John E. Thorson is designated as the principal hearing officer.

¹ The Commission's Rules are available on the Commission's website: www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/8508.htm.

3. Categorization and Need for Hearing

This ruling confirms the Commission's preliminary categorization of A.05-12-001 as ratesetting. This ruling, only as to categorization, is appealable under the provisions of Rule 6.4 of the Commission's Rules. This ruling confirms that evidentiary hearings are necessary as factual issues are in dispute.

4. Ex Parte Communications

Since A.05-12-001 is a ratesetting proceeding, *ex parte* communications with the Assigned Commissioner, other Commissioners, their advisors and the ALJ are generally prohibited. The limited exceptions to this prohibition are described at Pub. Util. Code § 1701.3(c) and Rule 7.

5. Scope of the Proceedings

In A.05-12-001, Conlin and Del Oro seek the Commission's authorization to transfer the Conlin water system operating in the area known as Strawberry, Tuolumne County, California, serving approximately 371 customers. The anticipated transfer is from Conlin to Del Oro under the terms and conditions of an Agreement to Purchase and Sell (July 20, 2005) and set forth as an attachment to the application. Additionally, if the transfer is approved, Del Oro seeks Class C and D Utility treatment, as set forth in ordering paragraphs 1-8 of D.92-03-093 (March 31, 1992).

In its protest (Jan. 5, 2006), the Division of Ratepayer Advocates asserts that the application should be denied as unreasonable, inconsistent with the law, and not in the ratepayers' interest.

6. Specific Issues to Be Addressed

The specific factual and legal issues to be decided in A.05-12-001 are as follows:

- (a) Should the proposed transfer of the water system from Conlin to Del Oro be approved under Sections 851, 854, and other applicable provisions of the Public Utilities Code?
- (b) Does the proposed transfer adequately and reasonably satisfy the remedies imposed upon Conlin in D.05-07-010?
- (c) Under the proposed transfer, who is responsible for any shortages in payment surcharges for the Safe Drinking Water Bond Loan and Department of Water Resources accounts? How should the Commission determine liability for any shortages?
- (d) Should Del Oro be granted Class C and D Utility treatment if the application is approved?
- (e) Should authorization of the proposed transfer be denied because the application is (i) incomplete; (ii) does not propose a bona fide sale; or (iii) would result in a situation harmful to ratepayers?
- (f) Have all the procedural requirements for the proposed transfer been satisfied? If not, does the public interest require that they be waived?

7. Schedule

The schedule for these proceedings is as follows:

Event	Date ²
Response to Motion to Dismiss in I.03-10-038	March 17
Reply re Motion to Dismiss in I.03-10-038	March 22
Discovery in A.05-12-001	Opens: March 9 Closes: March 31
Concurrent submission of prepared testimony	April 21
Concurrent submission of rebuttal testimony	April 28
Evidentiary hearing (limited to one day) Commission Courtroom State Office Building 505 Van Ness Boulevard	May 3 9:00 a.m. – 4:00 p.m.

² All 2006 unless otherwise indicated.

Event	Date ²
San Francisco, CA 94102	
Concurrent opening briefs due	May 31
Concurrent reply briefs due	June 14
18-month deadline for A.05-12-001	June 2, 2007

8. Alternative Dispute Resolution

The possible use of alternative dispute resolution (ADR) methods was discussed at the initial PHC. The parties agreed to try mediation and an ALJ mediator was assigned and has been working with the parties to resolve the disputed issues. If the parties submit a proposed settlement for approval, they shall also recommend in what manner the Commission's settlement rules (Rule 51 *et seq.*) should be applied in this proceeding. See Rule 51.10.

9. Discovery

Discovery will be conducted according to the Rules. If the parties have discovery disputes they are unable to resolve by meeting and conferring, they shall raise these disputes under the Commission's Law and Motion procedure. (See Resolution ALJ-164 (September 16, 1992).)

10. Service Lists/Filing and Service of Documents

The official service lists for these proceedings are attached to this ruling. The parties shall notify the Commission's Process Office of any address, telephone, or electronic mail (e-mail) change to a service list. The updated service list for each case is available on the Commission's Web page maintained for these proceedings.

Rule 2.3.1, "Service by Electronic Mail," applies to these proceedings.

Therefore, **IT IS RULED** that:

1. Application (A.) 05-12-001 and Investigation 03-10-038 are coordinated.

2. For A.05-12-001, the parties, scope of the proceeding, specific issues to be addressed and service list are set forth in paragraphs 1, 5, 6, and 10, above.

3. Administrative Law Judge John E. Thorson is the principal hearing officer in both proceedings.

4. The preliminary categorization of A.05-12-001 as ratesetting is confirmed. An evidentiary hearing is required.

5. The *ex parte* prohibition of Pub. Util. Code § 1701.3(c) and Rule 7 apply in A.05-12-001.

6. The schedule for the proceedings is set forth in paragraph 7.

7. Discovery in A.05-12-001 will be conducted and discovery disputes will be resolved pursuant to paragraph 9.

8. If the parties reach a proposed settlement, they shall submit it in this proceeding for review and approval. The parties shall also recommend in what manner the Commission's settlement rules (Rule 51 *et seq.*) should be applied.

Dated March 28, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN
Geoffrey F. Brown
Assigned Commissioner

/s/ JOHN E. THORSON
John E. Thorson
Administrative Law Judge

***** SERVICE LIST *****
Last Update on 27-FEB-2006 by: SMJ
I0310038 LIST

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A.05-12-001 I.03-10-038 GFB/JET/hl2

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CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated March 28, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.